

157797

E.S

2/13/02

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:) AGREEMENT
)
Beloit Corporation Superfund Site)
Rockton, IL) U.S. EPA Region 5
) CERCLA Docket No. **V-W-02-C-678**
)
Giuffre II, LLC, Settling Respondent) PROCEEDING UNDER SECTION
) 122(h)(1) OF CERCLA,
) 42 U.S.C. § 9622(h)(1) and
) Article 5, § 15 of the Illinois Constitution
) of 1970

I. JURISDICTION AND STATEMENT OF PURPOSE

1. This settlement agreement ("Agreement") is made and entered into by and among the United States on behalf of the United States Environmental Protection Agency ("EPA"), the State of Illinois ("Illinois") on behalf of the Illinois Environmental Protection Agency ("Illinois EPA") and Giuffre II, LLC a Wisconsin limited liability company ("Giuffre" or "Settling Respondent") (collectively the "Parties"). The Effective Date of this Agreement is as stated in Section XVI of this Agreement.

2. This Agreement is entered into pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1). The authority of the Administrator of EPA has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation 14-14-D. Giuffre

consents to and will not contest the United States' jurisdiction to enter into this Agreement or to implement or enforce its terms.

3. The Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, approves this Agreement pursuant to the inherent authority of the Attorney General to settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division.

4. The Assistant Illinois Attorney General, Chief of the Environmental Bureau, approves this Agreement pursuant to the inherent authority of the Illinois Attorney General to settle claims of the State of Illinois, which authority, in the circumstances of this settlement, has been delegated to the Assistant Illinois Attorney General, Chief of the Environmental Bureau.

5. Settling Respondent currently occupies a portion of the Property, and proposes to purchase it pursuant to an Asset Purchase Agreement dated as of April 17, 2000, between Settling Respondent and Beloit Corporation. Beloit Corporation's rights and obligations under the Asset Purchase Agreement were transferred to Beloit Liquidating Trust, which was established pursuant to the confirmed Chapter 11 Bankruptcy Plan of Beloit Corporation and its liquidating Debtor subsidiaries. Beloit Liquidating Trust is the transferee of all of the assets and causes of action of Beloit Corporation and its liquidating Debtor subsidiaries. Giuffre is in the business of purchasing former industrial properties, including those contaminated with hazardous substances, and redeveloping them for productive use.

6. The Property, currently owned by Beloit Liquidating Trust, is part of the Beloit Corporation Superfund Site, a large area of contamination listed on the National Priorities List ("NPL") in August of 1990. Soils, groundwater, and on-site pond sediments are contaminated with volatile organic compounds at concentrations which exceed federal maximum contaminant levels. Contaminated groundwater presents a threat to drinking water supplies in the surrounding area. Under Illinois EPA's direction, Beloit Corporation implemented an early-action remedial response action, and constructed an on-site pump and treat system, which currently extracts and treats approximately 8,000,000 gallons of contaminated groundwater each month. Settling Respondent proposes to buy Beloit Corporation's former fabricating and research development facilities, which comprise approximately 206 acres of the NPL Site.

7. The purposes of this Agreement are:

a. to avoid prolonged and complicated litigation by allowing Settling Respondent to settle and resolve, subject to the reservations and limitations contained in Sections VII (Certification), VIII (Covenants Not to Sue by the United States and Illinois), IX (Reservation of Rights), and X (Settling Respondent's Covenant Not to Sue) its alleged civil liability as an operator of a facility under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and the potential liability of the Settling Respondent for the Existing Contamination which would otherwise result from Settling Respondent becoming the owner and/or operator of the Property;

b. to facilitate cleanup of the contamination at the NPL Site by providing for Settling Respondent to provide financial assurances to the United States and the State of Illinois in settlement of such claims, and for the use of funds provided by Beloit and the financial assurances provided by Settling Respondent for performance of the remedial action to be selected for the NPL Site; and

c. to provide for contribution protection for Settling Respondent with regard to the Existing Contamination pursuant to CERCLA as set forth in Section XVIII of this Agreement.

8. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

II. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

a. "Agreement and Certification of Successor in Interest or Assign" shall mean the agreement and certification attached as Exhibit 4.

b. "Asset Purchase Agreement" shall mean that certain agreement between Beloit Corporation, as Seller, and Giuffre II, LLC (among others), as Purchaser, dated April 17th, 2000, which includes the terms of options for the sale of the "Property" as it is defined in this Agreement.

c. "Beloit" shall mean Beloit Corporation, a debtor in a proceeding under the U.S. Bankruptcy Code, and/or Beloit Liquidating Trust, the transferee of all of the assets and causes of action of Beloit Corporation and the owner of the Property prior to its acquisition by Settling Respondent.

d. "Beloit EPA Holdback Account" shall mean that account established pursuant to Beloit's bankruptcy plan of reorganization ("Beloit Plan of Reorganization")

in the amount of \$5,700,000, plus interest accruing thereon, to cover environmental costs to be paid on account of the NPL Site after the effective date of the Beloit Plan of Reorganization. The United States Bankruptcy Court for the District Court of Delaware confirmed the Beloit Bankruptcy Plan of Reorganization, thereby making it effective, on July 12, 2001.

e. "Beloit Special Account" shall mean an interest-bearing account within the EPA Hazardous Substances Superfund to be established by EPA pursuant to Section 122(b)(3) of CERCLA and this Agreement.

f. "Closing" shall mean the performance of the following actions:

(1) the assumption by Settling Respondent of certain obligations of Beloit under the terms of the Interim Response Action Consent Decree, pursuant to which Settling Respondent shall agree to perform the operation and maintenance necessary to ensure the continued effectiveness of the interim response action until the earlier of (i) the date of EPA's written notification to Settling Respondent that RD/RA negotiations have failed, or (ii) the effective date of the RD/RA Consent Decree;

(2) the provision and making effective by Settling Respondent of the financial assurances provided for in Paragraph 12.A(1);

(3) the transfer of title to the Property from Beloit to Settling Respondent;

(4) the transfer by Beloit of \$2.7 million from Beloit's EPA Holdback Account, plus any interest that has accrued in the Beloit EPA Holdback Account between the date of its creation and the date of such transfer, to the Beloit Special Account, less (i) any

sums already paid out of the Beloit EPA Holdback Account in accordance with the Beloit Plan of Reorganization, and (ii) any sums paid into the Escrow Account;

(5) the funding of the Escrow Account;

(6) the release to Beloit or to its assignee(s) of the remaining \$3.0 million from the Beloit EPA Holdback Account; and

(7) the issuance of letters by EPA and Illinois EPA making effective this Agreement after public comment.

g. "Effective Date" shall have the meaning stated in Section XVI of this Agreement.

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

i. "Escrow Account" shall mean that escrow account created by Settling Respondent and Beloit, and approved by Illinois EPA, in the amount of \$200,000 to fund the operation and maintenance necessary to ensure the continued performance of the interim response action for the period of time between the effective date of the escrow account and the earlier of: (i) the date of EPA's written notification to Settling Respondent that RD/RA negotiations have failed; or (ii) the effective date of the RD/RA Consent Decree. The Escrow Account shall provide that, upon termination, any funds remaining in the account shall be deposited into EPA's Beloit Special Account.

j. "Existing Contamination" shall mean:

(1) Any hazardous substance, pollutant or contaminant present or existing on or under the Property as of the Effective Date;

(2) any hazardous substance, pollutant or contaminant that migrated from the Property prior to the Effective Date; and

(3) any hazardous substances, pollutants or contaminants presently at the NPL Site that migrate onto or under or from the Property after the Effective Date.

k. "Illinois EPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of Illinois EPA.

l. "Illinois" shall mean the People of the State of Illinois, its departments, agencies and instrumentalities.

m. "Interim Response Action Consent Decree" shall mean that Consent Decree between Illinois on behalf of Illinois EPA and Beloit, entered by the United States District Court for the Western District of Illinois on October 17, 1991, and amended on September 13, 1996, which requires the construction, operation and maintenance of an on-site pump and treat system until such time as a final remedial decision is made for the NPL Site.

n. "NPL Site" shall mean the Beloit Corporation Superfund Site, which is located in the Village of Rockton, Winnebago County, Illinois, and which is depicted generally on the map attached as Exhibit 2. The NPL Site includes the Property, and all areas to which hazardous substances and/or pollutants or contaminants originating from the Property or NPL Site have come to be located.

o. "Parties" shall mean the United States on behalf of EPA, the State of Illinois on behalf of the Illinois EPA, and the Settling Respondent.

p. "Property" shall mean the entire portion of the NPL Site that Settling Respondent is acquiring from Beloit in the Asset Purchase Agreement. The Property comprises two adjacent parcels encompassing 55.59 acres and 150.51 acres, respectively, for a total of 206.10 acres, both of which are located at 1165 Prairie Hill Road, Town of Rockton, Winnebago County, State of Illinois. The Property is legally described in pages 1 and 2 of Exhibit 1 of this Agreement.

q. "RD/RA Consent Decree" shall mean a consent decree, conforming with EPA's Model RD/RA Consent Decree and Paragraph 12.B of this Agreement, between Settling Respondent and EPA, or among Settling Respondent and EPA and Illinois, providing for the performance by Settling Respondent of the Remedial Design and Remedial Action to be selected in the ROD for the NPL Site. The RD/RA Consent Decree includes the Statement of Work, which sets forth those tasks necessary to implement the Remedial Design, Remedial Action, and Operation and Maintenance at the NPL Site.

r. "ROD" shall mean a Record of Decision selecting final remedial action for the NPL Site.

s. "Settling Respondent" shall mean Giuffre II, LLC, a Wisconsin limited liability company.

t. "Successor in Interest or Assign" shall mean any person who acquires an interest, including a leasehold, subleasehold or occupancy interest, in the Property and who signs an Agreement and Certification of Successor in Interest or Assign, attached as Exhibit 4 hereto, and who meets all conditions therein.

u. "Transfer" shall mean each sale, assignment, lease, sublease, transfer or exchange by Settling Respondent, or by any Successor in Interest or Assign, of any portion of the Property, where title to the Property or any portion or interest thereof, including a leasehold, subleasehold or occupancy interest, (i) is transferred for consideration, (ii) is transferred involuntarily by operation of law, including by eminent domain or by foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure, or (iii) is transferred in any other manner from Settling Respondent, or from any Successor in Interest or Assign, to any other entity or person.

v. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

10. From approximately 1957, Beloit owned the Property and manufactured paper making machines. On June 7, 1999, Beloit filed a voluntary petition for relief under Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Pursuant to the Beloit Plan of Reorganization, the Beloit EPA Holdback Account was established in the amount of \$5,700,000, plus interest accruing thereon, to cover environmental costs to be paid on account of the NPL Site after the effective date of the Beloit Plan of Reorganization, which occurred on July 12, 2001.

11. a. The Settling Respondent is Giuffre II, LLC, a Wisconsin limited liability company, whose address is 445 W. Oklahoma Avenue, Milwaukee, Wisconsin.

Giuffre II, LLC is in the business of purchasing, redeveloping and operating former industrial properties that have become contaminated with hazardous substances. Settling Respondent intends to place the Property back into productive use, most likely as a distribution center. Settling Respondent's use and disposition of the Property will depend ultimately on the needs of the market at the time of the Property's availability, but in no event will Settling Respondent use the Property in a manner that would exacerbate the Existing Contamination, endanger persons on or near the Property or pose a threat to human health and the environment. The Settling Respondent represents, and for the purposes of this Agreement the United States and Illinois rely upon these representations: (1) prior to February 1, 2001, Settling Respondent's involvement with the Property and the NPL Site was limited to brief walking inspections of the Property, the purpose of which was primarily to assess the Property and its buildings and improvements for future use; (2) Settling Respondent has not performed any environmental testing or sampling, but is aware of the Existing Contamination through the extensive tests, records and other information provided by Beloit and its environmental consultants; (3) on April 17, 2000, Settling Respondent entered into the Asset Purchase Agreement providing Settling Respondent, inter alia, with certain options to purchase the Property; (4) on or about February 1, 2001, Settling Respondent exercised an option in the Asset Purchase Agreement to utilize a portion of the Property as an intermodal warehouse operation which acts as a transfer station between rail and trucking carriers; and (5) Settling Respondent has neither brought hazardous substances to the NPL Site nor utilized hazardous substances there, and the materials being

transferred consist of finished steel, drywall, lumber, aluminum and other similar products, all of which are manufactured off the NPL Site.

b. Prior to or contemporaneously with this Agreement:

(1) the United States and Illinois are entering into a separate Settlement Agreement with Beloit, which provides, inter alia, for the transfer by Beloit of \$2.7 million from Beloit's EPA Holdback account plus any interest that has accrued on the funds in the Beloit EPA Holdback account between the date of its creation and the date of such transfer, to the Beloit Special Account, less (i) any sums already paid out of the Beloit EPA Holdback account in accordance with the Beloit Plan of Reorganization; and (ii) any sums paid into the Escrow Account;

(2) Settling Respondent and Beloit will make effective that provision of the Asset Purchase Agreement which provides for the transfer of title to the Property from Beloit to Settling Respondent; and

(3) Illinois and Settling Respondent are entering into a separate agreement, the effect of which will be to substitute Settling Respondent as the party responsible under ~~the terms of the Interim Response Action Consent Decree for the operation and~~ maintenance necessary to ensure the continued effectiveness of the interim response action until the earlier of (i) the date of EPA's written notification to Settling Respondent that RD/RA negotiations have failed, or (ii) the effective date of the RD/RA Consent Decree.

IV. CONSIDERATION OF SETTLING RESPONDENT

12. A. **Required Payment and Cash-Out Alternative**

(1) On or before the Effective Date, in consideration and in exchange for the United States' and Illinois' Covenants Not to Sue in Section VIII herein and Waiver of Lien in Section XX herein, Settling Respondent shall:

(a) assume Beloit's obligation under the terms of the Interim Response Action Consent Decree to perform the operation and maintenance necessary to ensure the continued effectiveness of the interim response action until the earlier of (i) the date of EPA's written notification to Settling Respondent that RD/RA negotiations have failed, or (ii) the effective date of the RD/RA Consent Decree;

(b) with Beloit and subject to the approval of Illinois EPA, establish the Escrow Account to fund the operation and maintenance necessary to ensure the continued performance of the interim response action; and

(c) establish and make effective one or more irrevocable standby letters of credit in the total amount of \$3.0 million from an entity or entities which have the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

Settling Respondent's obligations hereunder are contingent on the performance of the following on or before the Effective Date: (a) the transfer by Beloit to Settling Respondent of ownership of the Property as provided in the Asset Purchase Agreement; and (b) the transfer by Beloit of \$2.7 million from the Beloit EPA Holdback Account plus any interest that has accrued on the funds in the Beloit EPA Holdback Account

between the date of its creation and the date of such transfer, to the Beloit Special Account, less (i) any sums already paid out of the Beloit EPA Holdback Account in accordance with the Beloit Plan of Reorganization; and (ii) any sums paid into the Escrow Account.

(2) The letter(s) of credit must be irrevocable and approved in form and substance by EPA in writing prior to the Effective Date. (A sample irrevocable letter of credit is attached hereto as Exhibit 3.) The letter(s) of credit shall be for a term of at least one year. The letter(s) of credit shall state that they are automatically renewed unless the issuer provides EPA with 120 days advance notice that the letter of credit will not be renewed and provides EPA with the opportunity to draw on the letter of credit in the 120 day period prior to its expiration. The letter(s) of credit shall provide that EPA may draw on the letter(s) of credit and deposit the proceeds into the Beloit Special Account if: (a) EPA notifies Settling Respondent in writing that the deadline for completion of negotiations under CERCLA for an RD/RA Consent Decree has expired and that no agreement has been reached; or (b) the issuer has provided EPA with notice ~~that the letter of credit will not be renewed and either (i) Settling Respondent has not~~ entered into an RD/RA Consent Decree, or (ii) Settling Respondent has entered into an RD/RA Consent Decree but has not yet provided alternative financial assurance complying with the requirements of the RD/RA Consent Decree. Subject to the prior written approval of the EPA, which approval shall not be unreasonably withheld, Settling Respondent may, from time to time, substitute replacement letters of credit with terms substantially the same as those financial assurances initially delivered.

(3) Unless Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, or except as otherwise provided in this Agreement, the financial assurances and other consideration provided for in this Agreement represent a cap or ceiling on the mandatory contribution of Settling Respondent for settlement of its alleged and potential liability for Existing Contamination and for the waiver of liens as provided in Section XX (Waiver of Lien). In the event Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, the terms of that agreement shall govern resolution of Settling Defendant's alleged and potential liability.

(4) The funds held in the Beloit Special Account and any draws by EPA on the standby letters of credit shall be used only for payment of the following costs: (a) those costs, if any, incurred by Illinois EPA to complete the Feasibility Study for the NPL Site; (b) costs incurred by EPA and Illinois EPA after July 12, 2001 in a manner not inconsistent with the NCP; and (c) costs associated with performance of the remedial action selected in the ROD. Any funds remaining in the Beloit Special Account upon the completion of the response actions at the NPL Site may be transferred by EPA into the EPA Hazardous Substance Superfund.

(5) After the selection of the final remedial action for the NPL Site in the ROD, the Parties shall engage in negotiations of the RD/RA Consent Decree in accordance with applicable EPA RD/RA negotiation policies. If the negotiations are successful, Settling Respondent shall enter into the RD/RA Consent Decree(s) with Illinois EPA and EPA for the performance of a Remedial Design, Remedial Action and Operation and

Maintenance of the Remedial Action selected in the ROD, and the RD/RA Consent Decree will become effective under its terms. The RD/RA Consent Decree between ~~Settling Respondent and EPA shall be based on EPA's 2001 Model CERCLA RD/RA~~ Consent Decree, a copy of which has been provided to Settling Respondent.

(6) In the event that the deadline for completion of negotiations under CERCLA for an RD/RA Consent Decree expires and no agreement has been reached, EPA may so notify Settling Respondent in writing and draw on the standby Letter(s) of Credit and may transfer those proceeds into the Beloit Special Account. The Settling Respondent's obligations under this Paragraph 12.A shall then be satisfied, and the previously described consideration and standby letter(s) of credit shall be deemed to be full consideration for the covenants and other consideration received by Settling Respondent under this Agreement, and thereafter Settling Respondent shall have no responsibility for the remediation or any other costs related to Existing Contamination, except as provided in this Agreement.

B. Work Alternative

(1) In the event RD/RA negotiations are successful, and Settling Respondent enters into the RD/RA Consent Decree, and the RD/RA Consent Decree becomes effective under its terms, then EPA shall, after retaining amounts necessary to pay any unpaid or future oversight costs of Illinois EPA and EPA or other response costs not addressed in the RD/RA Consent Decree, identify any amounts remaining in the Beloit Special Account, and shall transfer those remaining funds from the Beloit Special Account, including interest earned thereon, into a Beloit Disbursement Special Account.

Subject to the terms and conditions of the RD/RA Consent Decree, EPA agrees to make the funds in the Beloit Disbursement Special Account (including interest earned on the funds in that account) as of the effective date of the RD/RA Consent Decree available for disbursement to Settling Respondent as reimbursement for performance of the work required under the RD/RA Consent Decree. EPA shall disburse funds from the Beloit Disbursement Special Account to Settling Respondent in accordance with the procedures and terms established in the RD/RA Consent Decree. Such procedures and terms shall be consistent with the language providing for disbursement as used in EPA's 2001 Model RD/RA Consent Decree, and must include submission to EPA of Cost Summaries and Certifications, as those terms are used in EPA's 2001 Model RD/RA Consent Decree, of the necessary costs incurred and paid by Settling Respondent for the work covered by any particular submission.

(2) EPA agrees to release and return any unexercised letters of credit to Settling Respondent upon the substitution by Settling Respondent of financial assurance meeting the requirements of the RD/RA Consent Decree. Settling Respondent may propose to EPA and Illinois EPA to roll over letters of credit towards the financial assurance requirements of the RD/RA Consent Decree so long as Settling Respondent's proposal for the use of financial assurance is consistent with the RD/RA Consent Decree's requirements for financial assurance.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST OR ASSIGNS

13. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and Illinois EPA, their authorized officers,

employees, representatives, and all other persons performing response actions under EPA or Illinois EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the NPL Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the NPL Site under federal and Illinois law. EPA and Illinois EPA agree to provide reasonable notice to the Settling Respondent of the timing of response action to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA and Illinois EPA retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901, ("RCRA") et seq., the Illinois Environmental Protection Act ("Illinois Act"), 415 ILCS 5/1 et seq., and any other applicable statute or regulation, including any amendments thereto.

14. Within 15 days after the Effective Date, the Settling Respondent shall record a certified copy of this Agreement with the Recorder's Office or Registry of ~~Deeds in other appropriate office, Winnebago County, State of Illinois.~~ Thereafter, each deed, title, or other instrument conveying an interest in the Property, or any portion thereof, from Settling Respondent shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents shall be sent to the persons listed in Section XIV (Notices and Submissions).

15. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation as

that required of the Settling Respondent pursuant to this Agreement. The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the Effective Date and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of this Agreement.

VI. DUE CARE/COOPERATION

16. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the NPL Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA and Illinois EPA in the implementation of response actions at the NPL Site, and further agrees not to interfere with such response actions. EPA and Illinois EPA agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the NPL Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in

addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA and Illinois EPA of such release or threatened release.

VII. CERTIFICATION

17. By entering into this Agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and Illinois EPA all information known to Settling Respondent and all information in the possession or control of its officers, members, managers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the NPL Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the NPL Site. If the United States or Illinois determine that information provided by Settling Respondent is not materially accurate and complete, this Agreement, within the sole discretion of either the United States or Illinois, shall be null and void and the United States and Illinois reserve all rights they may have.

VIII. COVENANTS NOT TO SUE BY THE UNITED STATES AND ILLINOIS

18.a. Covenant as to Settling Respondent.

Subject to the Reservation of Rights in Section IX of this Agreement, after the Effective Date and upon Settling Respondent's provision of effective irrevocable standby letter(s) of credit required by Paragraph 12.A(1), the United States and Illinois covenant

not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Section 22.2(f) of the Illinois Act, 415 ILCS 5/22.2(f), with respect to the Existing Contamination.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Respondent of its obligations under this Agreement and under the Interim Response Action Consent Decree. In the event Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, this Agreement shall terminate and the terms of the RD/RA Consent Decree shall govern resolution of Settling Defendant's alleged and potential liability.

18.b Covenant as to Settling Respondent's Members, Managers, Officers, Directors and Employees

The United States' and Illinois' Covenants Not to Sue in Paragraph 18.a shall apply to Settling Respondent's members, managers, officers, directors, and employees to the extent that the alleged liability of the member, manager, officer, director, or employee is based on his/her status and in his/her capacity as a manager, member, officer, director, or employee of a Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. In the event Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, this Agreement shall terminate and the terms of the RD/RA Consent Decree shall govern resolution of the alleged and potential liability of Settling Respondent's members, managers, officers, directors and employees.

18.c. Covenant as to Successors in Interest or Assigns

The United States and Illinois covenant not to sue or take any other civil or administrative action against a Successor in Interest or Assign in the Property for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), or Section 22.2(f) of the Illinois Act, 415 ILCS 5/22.2(f), with respect to Existing Contamination, provided all of the following additional conditions are satisfied:

(1) prior to the Transfer, the Successor in Interest and Assign was not and/or is not subject to potential liability under CERCLA and/or any other law for Existing Contamination and so certifies;

(2) prior to the Transfer, the Successor in Interest and Assign agrees to, duly executes and submits to EPA by certified mail, return receipt requested, the attached Agreement and Certification of Successor in Interest or Assign in Exhibit 4 to this Agreement;

(3) prior to the Transfer, Settling Respondent's obligations under the Agreement have been satisfied, including the establishment and making effective one or more irrevocable standby letter(s) of credit in the total amount of \$3.0 million;

(4) the Successor in Interest or Assign did not and does not cause, contribute to or exacerbate the release or threat of release of hazardous substances, pollutants or contaminants in the soil or groundwater at the NPL Site;

(5) Illinois EPA, EPA, and their duly authorized employees, contractors and representatives are granted voluntary and continued access to the Property to operate and otherwise implement or oversee any response action; and

(6) the Successor in Interest or Assign agrees to be bound by all applicable obligations, covenants, reservations, limitations and other conditions and requirements imposed on and/or agreed to by the Settling Respondent under this Agreement.

If, after receiving the Agreement and Certification of Successor in Interest or Assign, EPA or Illinois EPA issues a written determination that any representation or certification submitted by a Successor in Interest or Assign is materially inaccurate or incomplete, the Covenants Not to Sue of this Paragraph 18.c shall be null and void with respect to such Successor in Interest or Assign, and the United States and Illinois reserve all rights they may have against such Successor in Interest and Assign.

With respect to any claim or cause of action asserted against the Successor in Interest or Assign by the United States, or by Illinois, the Successor in Interest or Assign shall bear the burden of proving the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination as of the date of the Transfer of the Property by the Settling Respondent to the Successor in Interest or Assign.

In the event Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, this Agreement shall terminate and the terms of the RD/RA Consent Decree shall govern resolution of the alleged and potential liability of any person who becomes a Successor in Interest or Assign after the effective date of the RD/RA Consent Decree.

IX. RESERVATION OF RIGHTS

19. The covenants not to sue set forth in Section VIII above do not pertain to any matters other than those expressly specified in Section VIII (Covenants Not to Sue by the United States and Illinois). The United States and Illinois reserve, and this Agreement is without prejudice to, all rights against Settling Respondent or against any Successor in Interest or Assign with respect to all other matters, including but not limited to, the following:

a. claims based on a failure to meet a requirement of this Agreement, including but not limited to Section IV (Consideration of Settling Respondent), Section V (Access/Notice to Successors in Interest), and Section VI (Due Care/Cooperation);

b. claims based on a failure to meet a requirement of the RD/RA Consent Decree, if negotiations for such an agreement are successful and Settling Respondent enters into the RD/RA Consent Decree, and the RD/RA Consent Decree becomes effective under its terms;

c. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the NPL Site caused or contributed to by Settling Respondent or its successors, assignees, lessees or sublessees;

d. any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

e. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the NPL Site after the Effective Date of this Agreement, not within the definition of Existing Contamination;

- f. criminal liability;
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by Illinois or by federal agencies other than EPA; and
- h. liability for violations of local, state or federal law or regulations.

20. With respect to any claim or cause of action asserted by the United States or Illinois, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

21. Except as specifically provided in Paragraph 18.b, nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States or Illinois may have against any person, firm, corporation or other entity not a party to this Agreement.

22. Except as provided in Section XI, nothing in this Agreement is intended to limit the right of EPA or Illinois EPA to undertake future response actions at the NPL Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the NPL Site or the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA or Illinois EPA in exercising its authority under federal or Illinois law. Settling Respondent acknowledges that it is purchasing Property where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

23. In consideration of the United States' and Illinois' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States or Illinois, their authorized officers, employees, or representatives with respect to the NPL Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law, any claim against the United States or Illinois, including any department, agency or instrumentality of the United States or Illinois under CERCLA Sections 107 or 113, or any applicable state statute or regulation, including but not limited to, the Illinois Act, related to the NPL Site, or any claims arising out of response activities at the NPL Site, including claims based on oversight by Illinois EPA or EPA of such activities or approval of plans for such activities.

24. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against Illinois based on negligent actions taken directly by Illinois, not including oversight or approval of the Settling Respondent's plans or activities, that are brought

pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, OR 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF THE COVENANT

25. This Agreement shall apply to and be binding upon the United States and Illinois, and shall apply to and be binding upon Settling Respondent's members, managers, officers, directors, and employees. Any change in ownership or corporate status of Settling Respondent, including, but not limited to, any transfer of assets of real or personal property, shall not alter Settling Respondent's responsibilities under this Agreement. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

26. Settling Respondent agrees that it will not sell, assign, lease, sublease, allow occupancy, transfer or exchange the Property except by means of a Transfer. In the event of a Transfer, the assignor or transferor shall continue to be bound by all the terms and conditions, and entitled to all the benefits, of this Agreement except as EPA and Illinois EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. The Covenants Not To Sue in Section VIII shall not be effective with respect to any Successor in Interest or Assign who fails to execute the Agreement and Certification of Successor in Interest or Assign, attached as Exhibit 4.

XII. DISCLAIMER

27. This Agreement in no way constitutes a finding by EPA or Illinois EPA as to the risk to human health and the environment which may be posed by contamination at the Property or the NPL Site nor constitutes any representation by EPA or Illinois EPA that the Property or the NPL Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

28. The Settling Respondent agrees to retain and make available to EPA and Illinois EPA, all business and operating records, contracts, NPL Site studies and investigations, and documents relating to operations at the Property, for at least ten years following the Effective Date, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA and Illinois EPA of the location of such documents and shall provide EPA and Illinois EPA with an opportunity to copy any documents at the expense of EPA and Illinois EPA. In the event that Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, then Settling Respondent's obligations concerning document retention shall be governed by the terms of that agreement.

XIV. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Agreement, notice is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement.

As to the United States:

Terese VanDonsel
Environmental Engineer
United States Environmental Protection Agency
77 W. Jackson Blvd. SR-6J
Chicago, IL 60604

with a copy to

Eileen L. Furey
Associate Regional Counsel
United States Environmental Protection Agency
77 W. Jackson Blvd. C-14J
Chicago, IL 60604

As to Settling Respondent:

Giuffre II, LLC
Attn: Frank P. Giuffre Manager
445 W. Oklahoma Ave.
Milwaukee, Wisconsin 53207

with a copy to

Gordon F. Barrington
224 N. 76th Street
Wauwatosa, Wisconsin 53213

As to Illinois:

Paul Jagiello
Division of Legal Counsel, Bureau of Land
Illinois Environmental Protection Agency
9511 West Harrison Street, 3rd Floor
Des Plaines, Illinois 60016

and

Eric Runkel
Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

XV. PUBLIC COMMENT

30. This Agreement shall be subject to a thirty-day comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper or inadequate. Unless EPA so modifies or withdraws its consent, after expiration of the comment period and the satisfaction of all other conditions of closing set forth in Paragraph 9.f., above, EPA and Illinois EPA shall provide Settling Respondent written notice of the Effective Date of the Agreement.

XVI. EFFECTIVE DATE

31. The Effective Date shall be that date on which all of the conditions of Closing are satisfied. In the event that this Agreement does not become effective under its terms before the final remedial action is selected for the NPL Site in the ROD, then the Agreement is null and void and of no effect.

XVII. TERMINATION

32. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Agreement, that Party may request in writing that the other Parties agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Parties to terminate such provision(s).

33. In the event that Settling Respondent enters into the RD/RA Consent Decree and the RD/RA Consent Decree becomes effective under its terms, then this

Agreement shall terminate, and the terms of the RD/RA Consent Decree shall govern resolution of Settling Respondent's alleged and potential liability.

XVIII. CONTRIBUTION PROTECTION

34. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement.

35. The Parties agree that after a Successor in Interest or Assign executes an Agreement and Certification of Successor in Interest or Assign as set forth in Exhibit 4, the Successor in Interest is entitled to protection from contribution actions or claims as provided by Section 113(f)(2), 42 U.S.C. § 9613(f)(2), of CERCLA for matters addressed in this Agreement unless, as provided above in Paragraph 18.c, EPA or Illinois EPA issues a written determination that a representation or certification submitted by a Successor in Interest or Assign is materially inaccurate or incomplete.

36. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or Illinois or any other person for the NPL Site with respect to the Existing Contamination.

37. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States and Illinois in writing no later than 60 days prior to the initiation of such suit or claim.

38. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States and Illinois within 10 days of service of the complaint on it.

XIX. EXHIBITS

39. Exhibit 1 shall mean the legal description of the Property which is the subject of this Agreement.

40. Exhibit 2 shall mean the map depicting the NPL Site.

41. Exhibit 3 shall mean the sample Irrevocable Standby Letter of Credit.

42. Exhibit 4 shall mean the Agreement and Certification of Successor in Interest or Assign.

43. Exhibit 5 shall be the Escrow Agreement between Giuffre and Brabazon Title Co., Inc.


XX. WAIVER OF LIEN

44. Subject to the Reservation of Rights in Section IX of this Agreement, upon Settling Respondent's provision of the effective irrevocable standby letter(s) of credit required by Section IV, EPA agrees not to file a notice of any lien it may have on the Property pursuant to Section 107(1) of CERCLA, 42 U.S.C. § 9607(1), and Illinois EPA agrees not to file a notice of any lien it may have on the Property pursuant to Section 21.3 of the Illinois Act, 415 ILCS 5/21.3, as a result of any costs incurred by EPA or Illinois EPA related to the Existing Contamination.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

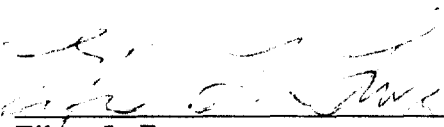
BY:



William E. Muno, Director
Superfund Division
United States Environmental Protection Agency
Region 5

Date: 2/13/02

BY:



Eileen L. Furey
Associate Regional Counsel
United States Environmental Protection Agency
Region 5

Date: 2/16/02

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

BY:

Alan S. Tenenbaum
Senior Attorney
Environmental Enforcement Section
United States Department of Justice

Date: _____

IT IS SO AGREED:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY:

Date: _____

Joseph E. Svoboda
Chief Legal Counsel

IT IS SO AGREED:

STATE OF ILLINOIS

BY:

Date: _____


Rosemarie Cazeau, Chief
Environmental Bureau
Illinois Attorney General's Office

IT IS SO AGREED:

Giuffre II, LLC

BY:

Date: 1-8-07



Frank P. Giuffre
Managing Member